

The Forgotten Victims of Canada's Pot Laws: Justice for racialized and Indigenous youth

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Overview

- Canada has almost a century of experience with cannabis prohibition.
- Legalization coming in part a result of the failures of this model.
- Little discussion about the disparate impact of cannabis and criminalization in the Canadian context.
- I argue that measures must be taken to acknowledge and repair the harms done during prohibition.

Background

- Legal Framework for drug control in Canada starts with *Opium Act* of 1908.
 - Laws used disproportionately to target Chinese following completion of CP railroad.
- Cannabis criminalized in 1923.
- Cannabis included as Schedule 1 drug in 1961 in revised *Narcotic Control Act* .
- Law enforcement efforts strengthened in 1980s as Canada further develops its War on Drugs.
- Mandatory minimums introduced for some cannabis related offences under Harper government.

Background

- Justin Trudeau rose to power on promise to legalize cannabis in Canada if elected.
- November 2015 letter from PMO to Ministers of Justice, Health and Public Safety calls for national framework recognizing.
 - Prohibition has failed to reduce/eliminate cannabis use.
 - Prohibition has adverse consequences for public and state alike.
 - Licit market could push organized crime out of cannabis business.
 - Potential for tax revenue.

Rates of Cannabis Use in Canada

- Past year cannabis use reported by **21%** of Canadians aged 15-19 and **30 %** aged 20-24 (CTADS, 2015).
- Lifetime cannabis use reported by **44.5%** of Canadians aged 15 years and older (CAS, 2009).
- Little in the way of racial differences in cannabis use among Ontario youth (Hamilton, Owusu-Bempah, Boak and Mann, forthcoming).
 - White, Black, Latino and Mixed-Race youth use at higher rates than Asian and South Asian youth.

Race and Participation in Drug Use/Sales

Table 1. Percent of Toronto youth who reported involvement in the following drug related activities over their lifetime.

	White	Black	South Asian	Asian	West Asian	Hispanic
Used marijuana	44.9	38.7	10.9	19.2	20.9	36.5
Used cocaine or crack	5.9	2.3	0.7	2.5	2.3	3.4
Used other illegal drugs	12.5	3.4	0.7	7.1	4.7	7.4
Sold illegal drugs	16.8	14.6	4.1	9.2	8.2	16.9

Source: Tanner and Wortley, 2002.

Cannabis and Criminalization

- 2000 to 2015 Canadian police agencies reported **809,413** cannabis possession “incidents” to Stats Can (avg. of **50,500** per year).
 - Approx. **60,000** convictions for cannabis possession in the time Trudeau has held office.
 - Offences highest among 18-24 year olds followed by 12-17 year olds.
- 2000 to 2015 Toronto Police Report **98,549** cannabis possession “incidents” to Stats.
 - Bill Blair acknowledged that those most harmed by prohibition are marginalized and racialized Canadians.

*Cannabis is a gateway drug.

Race, Cannabis and Criminalization

- “[O]ne effect of the war on drugs, intended or not, has been the increase in imprisonment of black people... (Commission, 1995: 82-83).
- 2002 Toronto Star series “Singled Out” showed us.
 - Blacks disproportionately arrested for simple drug possession.
 - Blacks also more likely to be denied bail for these charges – to be detained before trial.
- More recent Toronto Police data reveal Black people greatly over-represented in cannabis possession arrests.
 - Cannabis arrests increased in tandem with “carding”.

Consequences of Discriminatory Policing

- Adverse mental health outcomes , including depression, anxiety and PTSD (Geller et al., 2014).
- Increased likelihood of experiencing police use of force (Holmes and Smith, 2012).
- Promotes sense of social alienation, reducing education and employment successes and increasing participation in crime.
- More contact equals more opportunity for criminalization.

Race and Incarceration

Table 2. Aboriginal and Black Overrepresentation within Provincial Correctional Institutions in Canada, 2010–2011.

PROVINCE	ABORIGINALS		BLACKS	
	Percent Provincial Population	Percent Admissions to Provincial Correctional Institutions	Percent Provincial Population	Percent Admissions to Provincial Correctional Institutions
Newfoundland	4.7	14.7	NA	NA
Nova Scotia	2.6	8.4	2.1	14.0
New Brunswick	2.4	8.8	0.6	2.4
Prince Edward Island	NA*	NA	NA	NA
Quebec	1.6	4.4	NA	NA
Ontario	2.0	11.8	3.9	17.7
Manitoba	15.5	69.0	NA	NA
Saskatchewan	14.8	63.0	NA	NA
Alberta	5.7	38.6	1.4	5.0
British Columbia	NA	NA	NA	NA
Yukon	25.1	75.7	NA	NA
North-West Territories	50.3	89.4	NA	NA
Nunavut	84.9	98.7	NA	NA

Source: Owusu-Bempah and Wortley, 2014.

Race and Incarceration

Table 3. Percent of Inmates Within Federal Prisons in Canada from Selected Racial Groups, 2001–2011.

Racial Background	National Population ¹	Percent of National Population	Percent Federal Correctional Population	Odds Ratio	Rate of Federal Correctional Supervision (per 100,000)
White	25,000,155	80.0	64.1	0.80	58.6
Aboriginal	1,172,785	3.8	18.5	4.87	361.2
Black	783,795	2.5	8.4	3.36	245.6
Asian ³	2,090,390	6.7	3.0	0.45	32.4
South Asian ⁴	1,262,865	4.0	1.0	0.25	17.9
Hispanic	304,245	1.0	1.0	1.00	76.9
West Asian ⁵	422,245	1.3	1.2	0.92	63.5
Other	204,550	0.7	2.8	4.00	317.8
TOTAL	31,241,030	100.0	100.0	1.00	73.2

Source: Zinger, 2011.

Moving Forward:

The Trudeau government has promised to strengthen many laws around cannabis.

- Experience from the U.S. suggests that racial differences in criminalization remain after legalization.
- The harsh proposed laws for trafficking cannabis to a minor, for example, have the potential to increase disparities, based on the populations most policed.

Moving Forward: Pardons

Obtaining a pardon became more difficult as a result of changes made by the Harper government. The Trudeau government will revisit this.

- Criminal records for those convicted of minor cannabis offences and related administrative charges should be expunged.
- Non-conviction records should also be expunged.

Consequences of Concentrated Incarceration

Black and Aboriginal rates of federal incarceration have increased drastically in the past decade (between 75% and 90%)

- Adverse physical and mental health effects.
 - Exposure to virus/infection.
 - Threat of physical violence.
 - Psychological trauma of confinement (esp. solitary).
 - Exposure to dust, mold and other environmental toxins.

Consequences of Concentrated Incarceration Cont.

- Reduced employment opportunities.
- Disruption of social networks and family relationships.
- Loss of emotional and financial support for the families of the incarcerated.
- Children of the incarcerated experience psychological consequences including depression, anxiety, feelings of rejection, shame, anger, and guilt.
- Distorts social norms, reduces informal control thus undermining the building blocks of social order.

Moving Forward: Tax Diversion

Commit portion of cannabis tax revenue to assist criminalized individuals and communities. Allocations by level of government can align with jurisdiction and responsibilities.

- Education.
- Health care.
- Social programming.
- Community infrastructure.
- Jobs and skills training.

Moving Forward: Inclusion in Emerging Industry

Efforts should be made to ensure inclusivity in emerging multi-billion dollar industry.

- Preferential access to licences.
- A tiered licencing system to provide space for small businesses.
- Specialized loans to help disadvantaged entrepreneurs.
- Development of mentoring programs.

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